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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 MARK NUNEZ, et al.,

4 Plaintiffs,

5 v.

11 Cv. 5845 (LTS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

Remote Conference

8 -----x

9 April 26, 2022
2:00 p.m.

10 Before:

11 HON. LAURA TAYLOR SWAIN,

12 Chief Judge

13 APPEARANCES

14 THE LEGAL AID SOCIETY
15 Attorneys for Plaintiff Class
16 BY: MARY LYNNE WERLWAS
KAYLA SIMPSON

17 DAMIAN WILLIAMS
18 United States Attorney for the
Southern District of New York
19 JEFFREY K. POWELL
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APPEARANCES (Continued)

New York City Law Department
BY: KIMBERLY JOYCE
SHERYL NEUFELD
Assistants Corporation Counsel

STEVE J. MARTIN
Court Monitor

ANNA E. FRIEDBERG
Deputy Court Monitor

ALSO PRESENT: Louis Molina, Commissioner, DOC

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(The Court and parties appearing by videoconference)

(Case called)

THE COURT: We are here today for a status conference.

This conference was scheduled to give the parties an opportunity to address the grave urgent concerns identified by the monitoring team in the March 16, 2022, special report, which has since been updated by reports dated April 20 and April 25.

The office of the United States Attorney has also filed a letter expressing its concerns regarding communications and action on the part of the department and the city.

The conference was also convened to address the status of implementation regarding the monitoring team's recommendations included on pages 67 to 74 of the special report.

I thank the parties' counsel and the monitoring team and particularly the commissioner of the Department of Correction for attending this virtual conference today, and I am now going to ask the video participants to state their appearances for the record and for the benefit of those who are listening.

I will begin with the monitoring team representatives.

Mr. Martin, you need to unmute yourself.

MR. MARTIN: I appreciate that, your Honor.

My name is Steve Martin. I am the monitor in the

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1 Nunez matter.

2 MS. FRIEDBERG: Good afternoon, your Honor. My name
3 is Anna Friedberg. I am the deputy monitor of the Nunez
4 matter.

5 THE COURT: Thank you.

6 And counsel for the plaintiffs.

7 MS. WERLWAS: Good afternoon, your Honor.

8 Mary Lynne Werlwas, the Prisoners Rights Project of
9 The Legal Aid Society, counsel for the plaintiffs.

10 MS. SIMPSON: Good afternoon, your Honor. Kayla
11 Simpson Prisoner Rights Project of The Legal Aid Society, also
12 for the plaintiffs.

13 THE COURT: Good afternoon.

14 And the office of the United States Attorney?

15 MR. POWELL: Good afternoon, your Honor. My name is
16 Jeffrey Powell. I am representing the government.

17 Along with me is Lara Eshkenazi.

18 MS. ESHKENAZI: Good afternoon, your Honor, Lara
19 Eshkenazi from the Southern District of New York.

20 THE COURT: Good afternoon.

21 And for the city and the Department of Corrections?

22 MS. JOYCE: Good afternoon, your Honor. Kimberly
23 Joyce, from the New York City Law Department, as well as my
24 cocounsel Sheryl Neufeld, who is our chief assistant for
25 regulatory law and policy is joining me, as well as

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1 commissioner --

2 MR. MOLINA: Louis Molina, your Honor. I'm
3 commissioner, New York City Department of Correction.

4 MS. NEUFELD: Good afternoon, your Honor.

5 THE COURT: Good afternoon.

6 And, again, thank you all for being here.

7 For those who are listening in, if you are on a line
8 that has the ability to be heard, you must keep yourself muted
9 at all times. And if we end up having interference in the
10 video feeds, just to avoid that if possible, I will ask the
11 video participants keep their video audio muted when they are
12 not themselves speaking.

13 I remind everyone that, as provided in the Court's
14 January 19, 2021 standing order filed in Docket No. 21-MC-45,
15 neither recording nor retransmission of any part of this
16 proceeding is permitted by any participant or listener,
17 including parties, counsel, the public, and the press.

18 I will be calling on each speaker during the
19 proceeding. Each time that you speak, please identify yourself
20 by name for clarity of the record and for the benefit of those
21 who are listening in.

22 Please don't interrupt each other or me during the
23 conference. If we interrupt each other, it's difficult to
24 create an accurate transcript. But, having said that, I, as
25 usual, apologize in advance for breaking this rule, because I

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1 may interrupt if I have questions. And I will give the
2 attorneys an opportunity to make additional comments or ask
3 questions at the end of the conference.

4 But if anyone has any difficulty hearing me or another
5 participant at any time, please say something right away or
6 raise the electronic hand.

7 I am going to make some introductory remarks before I
8 call on the parties to speak.

9 We've previously convened on September 24 and December
10 2 of last year for emergency conferences to discuss the myriad
11 of issues identified by the monitoring team in its status
12 reports that were issued in the summer and fall of 2021.

13 In response to the ongoing cries at Rikers Island, the
14 Court approved and entered a second remedial order on September
15 28, 2021, which is at docket entry No. 398, which focused on
16 the implementation of immediate security initiatives to improve
17 the extremely dangerous conditions at the jails.

18 The Court also approve and entered a third remedial
19 order on November 2, 2021, and that is filed at docket entry
20 No. 424. That focused on the implementation of initiatives to
21 increase timely accountability for use of force violations.

22 The monitoring team's March 16, 2022, special report
23 states that so far these measures have failed to ameliorate the
24 crisis of what the monitoring team characterizes as patently
25 unsafe conditions in the jails. In addition to providing a

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1 great level of detail on the foundational issues currently
2 facing the city and the department, including the persistent
3 levels of violence in the facilities, the March special report
4 provided a detailed update on the department's efforts to
5 achieve compliance with the second and third remedial orders.
6 Although efforts to implement the requirements of the third
7 remedial order focused on timely accountability appear to show
8 the most promise, many of the monitoring team's updates are
9 very disturbing in that they call out lack of progress across
10 the spectrum of identified issues.

11 I have also received and reviewed the April 19, 2022,
12 status update from the U.S. Attorney's Office and the monitor's
13 April 20 and April 25, 2022, status reports, which reemphasize
14 the level of gravity and urgency of the current security
15 situation and describe the status of ongoing negotiations.

16 I have also received and reviewed the city's April 25,
17 2022, status report that is from the city and the Department of
18 Corrections discussing the work undertaken by the commissioner
19 and the city thus far and a proposed approach for addressing
20 the critical state of conditions.

21 Today I expect to hear more about how the city and the
22 department plan to implement the recommendations proffered by
23 the monitoring team to improve safety, ensure humane
24 conditions, and work toward compliance with the second and
25 third remedial orders.

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1 The monitoring team has noted in its report that with
2 each new administration and/or leadership change the department
3 restarts the clock of reform, and initiatives built on solid
4 correctional practice are revised or abandoned before benefits
5 are ever realized.

6 This is a matter of very serious concern to the Court.
7 We are now six years into the effort to make Rikers a safe
8 place for detained individuals and staff. The fact is that a
9 court order has been in place against the same institutional
10 and official defendants for six years. The parties and the
11 Court have benefited from a wealth of information from the
12 Court-appointed monitoring team which includes subject matter
13 experts as to the conditions and potential steps forward.

14 Restarting the clock on reform because a new
15 administration has taken office isn't a simple answer, and it
16 really can't be the answer when a crisis such as this has been
17 inherited and legal standards and expectations have been put in
18 place by court orders, especially when thousands of hours of
19 expert analysis and advice have enabled the monitor to identify
20 root problems and develop specific recommended approaches that
21 are ripe for implementation.

22 And so today I do expect to hear about specific steps
23 and concrete timelines.

24 I thank you all for listening. I wanted to be as
25 candid as possible in opening this proceeding about my

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1 understanding of the situation and my expectations. It is one
2 in which every single day people are in danger, people who are
3 detained, people who are employed. So it is my hope and
4 expectation that we'll come away from this conference with some
5 specific commitments and steps and timetables.

6 So, with that, I will turn to the agenda which I'm
7 grateful to the parties for collaborating on, and I will begin
8 with the opening status report from the monitor and the deputy
9 monitor.

10 MR. MARTIN: Thank you, your Honor. My name is Steve
11 Martin, the monitor in the *Nunez* matter.

12 I'm going to be brief, plain spoken, and direct in my
13 observations on the issues before the Court and the parties.

14 On March 16, 2022, my office filed the special report
15 detailing objective evidence of a very troubled and patently
16 unsafe confinement operation for both staff and detainees who
17 inhabit the facilities operated by the DOC.

18 My office, led by my deputy monitor, assembled a
19 treatise on the current state of affairs and, more importantly,
20 the impediments to the reforms required by the consent judgment
21 in three successive remedial orders. I as the monitor stand by
22 this treatise and warrant it to be an informed and highly
23 credible, work product.

24 On April 20 my office filed a status report stating
25 that conditions remain troubled and patently unsafe. We have

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1 also detailed our efforts in working with the DOC to develop an
2 implementation plan to address current conditions of
3 confinement and the means to find a pathway to address the
4 structural impediments to reform.

5 We concluded that status report with the following
6 statement that I would like to reiterate, and I quote, "We are
7 at a crossroads and extraordinary remedies must be given
8 deliberate consideration. An option that may offer a viable
9 pathway for the city and the DOC to retain management of the
10 city jails is to immediately begin taking concrete steps to
11 actually implement the monitoring team's recommendations and
12 for the city and the DOC to immediately and aggressively remove
13 all barriers to implementation of initiatives that are
14 necessary to bring safety and stability to the jails. Given
15 the daily risk of harm to incarcerated individuals and staff,
16 nothing less should be tolerated."

17 Let me put this statement in context with an example
18 that will hopefully illustrate the real-world complexities of
19 managing 5,000 detainees and 7,000 staff.

20 On April 13, I initiated a phone call with the
21 commissioner due to my grave concerns over the high levels of
22 violence at RNDC. He immediately made himself available and
23 allowed me to detail the basis for my concerns. We set about
24 to discuss measures needed to address the violence at RNDC.
25 Less than 24 hours later he presented an emergency response

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1 plan. The plan reflected a series of concrete actions that
2 could be taken within his authority to abate the violence. He
3 began to immediately implement the plan.

4 This commissioner in my experience with him during his
5 first 120 days of service has demonstrated a strong command of
6 issues that must be addressed. He's fully committed to reform
7 and is not risk averse to exercising his authority toward that
8 end.

9 But here's the rub, the most critical observation that
10 my staff and I can offer is this: There are a number of
11 initiatives critical to reform that are within the
12 commissioner's authority but that heretofore have not been
13 fully exercised. There are also initiatives critical to reform
14 that may not be within his current scope of authority that will
15 require action by other city governing authorities. This is
16 what my deputy monitor and I referred to as "cutting the red
17 tape to reform."

18 Reform of the agency will necessitate not only voicing
19 a willingness to reform, but the taking of concrete action by
20 the city's leadership and the department and its leadership
21 staff and their representatives to address the four
22 foundational issues we have identified and to implement the
23 recommendations attendant thereto.

24 I fully acknowledge that if the city does not find a
25 way to cut the red tape that is impeding reform and the

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1 department and its leadership and staff and their
2 representatives do not embrace this effort, more extreme
3 measures will be necessary.

4 My years of experience in institutional reform have
5 taught me that the best pathway for achieving sustained reform
6 in any institution is when the agency, working in conjunction
7 with the necessary players from local government, is able to
8 implement the reforms itself. Oversight and guidance by the
9 Court are equally important, but the agency and the local
10 government officials must own the reforms for those changes to
11 be sustained -- for those changes, excuse me, to be sustained
12 over time.

13 In this case the new administration will need to do
14 that hard, in-the-trenches work to achieve significant changes
15 in practices. Whether the city and department in fact are
16 capable of making the changes is not yet known. That said, our
17 recommendations are intended to provide a road map for what
18 they must do. Such changes are not easy or quick, but I
19 believe if the city and the department take the swift and
20 aggressive actions that have been laid out that there is a
21 pathway for them to maintain management of this department.

22 To that end, if in the coming weeks the city and the
23 department working in conjunction with the monitoring team can
24 develop an implementation plan that can be embraced, then the
25 city and the department should be given the opportunity to

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1 execute it. The monitoring team will be in a position to
2 provide routine assessments to the Court and the parties, who
3 will then be in a position to determine whether the city and
4 the DOC are meeting the challenge within six months. If they
5 fail, the city and DOC clearly risk abdication of their
6 authority to external controls.

7 At this juncture I call upon my deputy monitor to
8 elaborate on a number of illustrative critical issues where
9 impediments to reform exist.

10 Thank you, your Honor.

11 THE COURT: I said thank you, Mr. Martin. I was
12 muted. Ms. Friedberg.

13 And I will mute myself again.

14 MS. FRIEDBERG: Thank you, your Honor. I am Anna
15 Friedberg, the deputy monitor.

16 Before I provide a brief overview on the work we are
17 doing with the city and the department, I wanted to briefly
18 advise the Court on one update regarding the monitor team's
19 access to information from the department.

20 As you know, this has been an area of concern for us
21 of late. But we have seen improvement in the last few weeks
22 and even in the last few days of the department's efforts to
23 proactively engage the monitoring team.

24 The city's letter that was submitted yesterday
25 provides the specific particulars. If the department continues

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1 to faithfully engage the monitoring team, as it has now
2 committed to do, the department should be in a better position
3 to inform the monitoring team and engage in necessary
4 consultation. We will advise the Court and the parties should
5 that change.

6 With respect to our work with DOC and the city on
7 addressing our recommendations, as the monitor just described,
8 the department's work is intrinsically intertwined with the
9 city in a number of ways, from city hall to OMB and budget, the
10 imposition of discipline and interplay with OATH, to
11 procurement, contracting rules, and various issues related to
12 labor via contracts, rules, regulations, and laws.

13 These, along with the various internal bureaucratic
14 and complicated rules, makes it difficult to reform the many
15 practices and procedures that must be changed and approved in
16 the agency.

17 The recommendations that we laid out in our special
18 report provide a pathway towards reform and are intended to
19 catalyze change in two important ways.

20 The first is intended to cut the red tape, as
21 Mr. Martin just described.

22 The second is to focus on four foundational issues
23 that must be the priority and focus of the work and the
24 department.

25 I will take each in turn.

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1 With respect to cutting the red tape, the monitoring
2 team's six years' of work has led us to learn in painstaking
3 detail the many rules regulations and laws that have worked to
4 create the morass of complicated and convoluted bureaucracy
5 that the department faces. The city must immediately take
6 aggressive and dramatic action not previously taken before to
7 support the agency.

8 Time is of the essence, and there should be no greater
9 priority for the city than to determine how it can address
10 these issues and change practice. We welcome the city's letter
11 that was filed with the Court last night, but we must emphasize
12 that many of the initiatives the city are evaluating are ones
13 that have been identified by the city before. They are not
14 new.

15 As the monitor just mentioned, it is isn't about -- it
16 isn't just about identifying the issues that need to be
17 addressed or even necessarily identifying the solutions. It
18 how the city is going to support the department in its efforts
19 to address these issues differently.

20 Last September, the monitoring team issued a status
21 report that identified a number of initiatives that the city
22 and the department had developed to address both the staffing
23 crisis and current conditions. It is worth noting that many of
24 the creative initiatives that were proposed by the city were
25 then ultimately either abandoned or determined not to be

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feasible.

For example, the creation of a clinic on site to address staff medical issues on island was ultimately determined to be too expensive.

Another idea, providing medical care on the housing units to avoid unnecessary escorts, was then ultimately determined operationally unfeasible.

While we aren't suggesting that these two initiatives must be revived, we use these as examples to illustrate why we simply cannot continue with this same approach in which ideas are proffered and later submissions report that they won't work.

To that end, the monitoring team identified seven steps that the city must take in the letter we submitted to the Court yesterday in which we would expect to see the city to do things differently so that the monitor's recommendations can actually be implemented.

I would like to provide three illustrative examples that will help highlight the type of changes that need to be made.

First, with respect to our recommendation that the department must have ability to hire external correctional expertise, the monitor and the deputy monitor were provided a briefing by the commissioner yesterday of a potential pathway forward to address this recommendation.

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1 The particulars of that are still under development
2 and should be finalized shortly. However, it's important to
3 note that there are a series of different rules, regulations,
4 and laws that may inhibit the ability for this particular
5 approach to be adopted.

6 Should those become barriers, the city immediately, at
7 once, must advise the parties and the monitoring team so that
8 other solutions can be devised, for instance, seeking an order
9 from the Court which would allow the department to ultimately
10 be able to retain and hire individuals outside of the uniform
11 rank to support the department. As you know, many of our
12 recommendations hinge upon the fact that there's an infusion of
13 external expertise, which is why this is such a critical
14 initiative.

15 Another example is the need for additional staff for
16 the department to be able to impose timely accountability. As
17 you know, there's a variety of different reasons and mechanisms
18 in which, must be in play for the department to impose
19 accountability, but there is one simple issue right now, and
20 that is capacity.

21 The department needs the staff in order to impose this
22 accountability. In fact, the letter that they submitted
23 yesterday contemplates that they are now going to try to
24 expedite discipline related to staff absenteeism issues. While
25 we certainly welcome that, the question is, how can that occur?

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1 The department provided a plan to the monitoring team
2 last Friday about its staffing needs in which it advised us
3 that, despite significant recruitment efforts, it has been
4 unable to retain the necessary staff that they need for the
5 trials division.

6 In some ways it is not surprising. It is certainly a
7 difficult labor market right now, and the issues facing the
8 department make it a tough one to recruit for, but neither of
9 those are excuses for which the department can use in order to
10 evade obtaining the necessary staff.

11 The department needs incentives. They need ways to
12 encourage people to come and work for the agency.

13 We have proffered, for instance, the example that they
14 should be afforded the opportunity to allow individuals who
15 work for these units to work from home remotely at least for
16 some period of time every week, every month, something like
17 that. We have been advised that unfortunately that the city
18 believes that they are unable to do that because their policy
19 related to remote work must apply to the city as a whole.

20 This is just one example of where the city must act
21 differently. This agency cannot be treated like all of the
22 others. Approaches like that are going to continue to inhibit
23 the department in implementing our many recommendations if we
24 come across these issues.

25 Finally, I just wanted to address another -- my third

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1 example is addressing the sick leave abuse. As you know, and
2 the department and the city have acknowledged, they need to
3 address the loopholes related to sick leave abuse. In fact,
4 the letter yesterday submitted by the city proposed that as one
5 initiative they are going to increase the use of checks for
6 individuals to ensure that they are home, home confinement
7 visits as they're referred to by the department.

8 Those are checks in which, if an individual is home
9 for 12 days or more so that they are then placed on chronic
10 sick leave status, they must be home. And so a check is done
11 to make sure they're home. In order to do that check, every
12 available door must be knocked on 20 times, and the phone must
13 be called 40 times.

14 As you can hear, just in the myriad of steps that I
15 have just described, that's certainly a convoluted and
16 complicated way in order to enforce whether or not individuals
17 are at home. While I appreciate that the department or the
18 city may try to engage in additional resources to have those
19 checks done, the issue should actually be taking one step back:
20 How can these procedures be more common sense, straightforward,
21 not having 15 different ways in which staff might be able to
22 abuse the system because one of those particular procedures
23 have not been followed.

24 The City of New York has incredibly talented and
25 creative people working for it, and they have significant

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1 resources. It's the greatest city in the world. The question
2 is whether they have both the will and ability to put those to
3 use right now to help the department.

4 I would like to just briefly touch upon the four
5 foundational issues of which we believe that the work of the
6 department needs to be focused as we all endeavor to make the
7 jails a safer place. The department's focus must be on these
8 four foundational issues.

9 It bears emphasis that the department's plans to
10 operationalize the many recommendations for our special report
11 must be done thoughtfully, methodically, and in concert with
12 one another, because the department has a series of polycentric
13 problems -- some of which I just described, and many more have
14 been outlined in our reports -- that represent a complicated
15 set of dysfunctional practices unlike any jail system that the
16 monitoring team has had experience.

17 How best to address these issues is therefore even
18 more complicated because there is not one solution to the
19 problems, but also everything can't be addressed at once. So
20 items must be appropriately prioritized and synchronized, and
21 some things must happen before others.

22 The monitoring team is currently working on an
23 implementation plan with the city to address this combination
24 of factors.

25 The areas of focus that we are looking at are:

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(1) Security

(2) Staffing

(3) Management of incarcerated individuals related to classification, housing, and responses to violence and

(4) Accountability.

The thrust of our recommendations include dedicated focus on specific foundational issues such that, given the myriad of other things that are going on, the department must focus on a few, the four I just mentioned. But it's important to note that at least one of these foundational issues is quote-unquote new to the work of the monitoring team, and that is related to staffing.

As you know, we have long focused on the issue and concern related to *Nunez*, but the specific initiatives that we are describing today are in fact new.

Two, there is a need for an infusion of expertise into the agency.

And, finally, there must be an increased capacity to actually do the work to bring people back. That's certainly going to include the need for additional civilian staff. We talked about it with respect to the trials division, but I would be remiss if I did not note that additional individuals are going to be needed throughout the department in particular as the department moves away from utilizing uniformed staff in civilian posts.

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1 So there's certainly going to be quite a large need
2 for individuals to come and work in the agency so that
3 uniformed staff can get back to the work that they have been
4 hired to do.

5 We are incredibly anxious to see the results of this
6 work and feel the frustration that many of the monitor's team's
7 recommendations have languished for far too long. But neither
8 of these are reasons enough to shortchange the work that must
9 that happen to ensure that a thoughtful implementation plan is
10 developed, that provide for individuals who both have the
11 authority to cut the red tape and have the operational knowhow
12 to address our recommendations.

13 We plan to discuss in more detail the implementation
14 of the monitoring team's recommendations later in this
15 conference, but in advance we must note that we are still
16 actively working with the city and department on these. And as
17 you will hear more today, because of the complexity of these
18 issues, more time is needed to finalize the plan.

19 It is for that reason that the monitoring team
20 recommends and requests that the Court convene another
21 conference in three weeks in order to present the final plan.
22 We appreciate it may be more prudent to discuss next steps at
23 the conclusion of this conference, but we wanted to highlight
24 this request at the outset.

25 We remain committed to doing all that we can to

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1 address these grave conditions in the jails, and please let us
2 know if you have any other questions. We otherwise cede to our
3 colleagues at department and the City of New York.

4 THE COURT: Thank you, Ms. Friedberg.

5 I will now turn to Ms. Joyce and the commissioner.

6 MS. JOYCE: Good afternoon, your Honor. Thank you for
7 giving me an opportunity to make a few brief remarks.

8 First, I wanted to state that the city and, as you'll
9 hear, the department are in general agreement with the
10 monitoring team about all of their recommendations. And we are
11 actively working with them to develop an implementation plan
12 that we hope will be submitted to the Court for approval in the
13 coming weeks.

14 In a moment I will turn to Commissioner Louis Molina
15 of the New York City Department of Correction to discuss the
16 work he has done since he was appointed commissioner just a few
17 months ago and the work he will do, much in consultation with
18 the monitoring team, to bring lasting reform to the department.

19 This is not a restarting of the clock on reform. We
20 are taking the aggressive, dramatic, and bold steps necessary
21 now to achieve lasting change.

22 If the Court should have questions for the city or the
23 department, I will be happy to answer those questions that are
24 legal or law related, and I will defer to the commissioner so
25 he can speak to the facts and the plans going forward.

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1 Thank you, your Honor, for your time and now I defer
2 to my colleague, the commissioner.

3 THE COURT: Thank you, Ms. Joyce.

4 Mr. Commissioner.

5 MR. MOLINA: Good afternoon, Judge Swain. My name is
6 Louis Molina. I am the commissioner for the New York City
7 Department of Corrections.

8 It's good to see you again. The last time we met was
9 April 19, 2017, when I was first appointed to the department as
10 the chief internal monitor under the consent judgment. I
11 accompanied you on a tour not only of John Jay College where
12 the department was using it for training, but we also toured
13 our then training academy on Metropolitan Avenue and we toured
14 our GMDC facility Rikers Island, when it was open.

15 Thank you for giving me a few minutes to make an
16 opening statement to the Court. I want to first acknowledge
17 the frustration of the performance of the department since the
18 inception of the consent judgment.

19 While the record of poor performance is clear and well
20 documented by the monitor, I think it will be helpful for the
21 Court to learn about me and what I have done over the last
22 approximate three and a half months since I was appointed
23 commissioner of the New York City Department of Correction.

24 But, your Honor, before I get into what I have been
25 doing to date, let me first state up front that I am in total

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1 agreement with the monitor's recommendations, and I intend to
2 adopt them pursuant to further discussions regarding timelines
3 and other details I intend to work out with the monitor for the
4 implementation plan that will be filed with the Court for
5 approval in the near future.

6 My vision, your Honor, is to create a culture of
7 discipline and service to persons experiencing incarceration
8 that ultimately, with the implementation of the monitor's
9 recommendations and additional business management improvements
10 will create an operational ecosystem of safety and
11 rehabilitation, replicating what I was able to achieve when I
12 was a first deputy commissioner of the Westchester County
13 Department of Corrections, which was under federal oversight
14 agreement with the United States and within the three years of
15 my appointment was successfully concluded.

16 It is important that I begin my stating that during my
17 transition assessment of the department and shortly after
18 becoming commissioner, it was clear to me, as it was back in
19 2016, that the exact same four foundational issues that the
20 monitor stated in its twelfth monitor's report has normalized
21 poor practices and produced poor outcomes.

22 Those issues, for clarity, are the department security
23 practices and procedures, which are deeply flawed and
24 inconsistent with and illogical even to those with no law
25 enforcement experience. There was inadequate supervision at

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1 the facility level, and, quite frankly, this is an issue at
2 other business units.

3 Staffing practices and procedures do not allow us to
4 be effective operationally. And while the monitor describes a
5 limited and extremely delayed accountability for staff
6 misconduct, I can tell you from what I have seen is there was
7 no accountability in a number of areas, even those not
8 connected to the consent judgment, but nonetheless impacted it
9 because the prior leaders of the department created an
10 environment where the discipline needed to operate a law
11 enforcement agency was absent.

12 I believe that what allowed these four foundational
13 areas to worsen year after year was a combination of two
14 things: First, the prior administration's unwillingness to use
15 the full power that is inherent to the office of the
16 commissioner; and, secondly, the drive, which is unrelated to
17 the consent judgment, to advance the political argument that
18 Rikers Island needed to be closed. And this viewpoint,
19 preimposed the borough-based jail plan, created what I think
20 was an environment of disinvestment in the department's human
21 capital and facility infrastructure as well as an intentional
22 dismantling of the department's ability to operate.

23 To make the case to this court that I as the
24 commissioner, with the support of Mayor Adams, can turn this
25 around, I share with you some of what I have done since my

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1 appointment.

2 While staffing is not where I want it to be, over 1300
3 officers have returned to work, which has allowed the
4 department to shift five out of eight facilities back to
5 eight-hour tours of duty. We have welcomed back external
6 program providers and have reopened family visitation.

7 While it's been less than four months, as of April 24,
8 assaults on uniformed staff calendar year to date have
9 decreased 22 percent, assault on nonuniformed staff has
10 decreased 37 percent, and use of force department-wide has
11 decreased 25 percent calendar year to date.

12 I recognize the frequency of these assaults and force
13 incidences are still high, but a decreasing trend is welcome,
14 and my goal is to condition to sustain these trending levels.
15 Implementing best practices, sustaining minimum standards
16 cannot exist without a timely and meaningful discipline
17 process, which quite frankly has never existed in this
18 department.

19 For all the public rhetoric of the prior
20 administrators, when caring my same initial time in office to
21 the prior two commissioners, I have closed out and administered
22 final disciplinary dispositions in 725 disciplinary cases. The
23 prior two commissioners closed only 322 and 208 disciplinary
24 cases respectively in the same time frame.

25 If leadership at its highest level does not hold

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1 persons accountable, then the same mediocre attitude when it
2 comes to accountability trickles down to all supervisory ranks
3 and does nothing but normalize exhausted mediocrity. Slashings
4 have been increasing since the calendar year 2021 because
5 facility and tactical search operations for too long were just
6 not being done.

7 In response to the violence, I initiated increased
8 facility search operations for contraband weapons and
9 reinstituted tactical search operations. In calendar year to
10 date department-wide, 2,297 contraband weapons have been
11 seized. 12 out of the 20 tactical search operations alone were
12 conduct at RNDC and recovered 685 contraband weapons. And the
13 department has stopped the practice of housing individuals
14 solely by their gang affiliation and broke up and rebalanced
15 gang housing that was the past practice of the department.

16 I have also changed the department's policy that
17 previously prevented credible messengers access to department
18 facilities. With the change, they now have the opportunity to
19 engage with our troubled young adults in an effort to cease the
20 ongoing violence.

21 Lastly, as I have alluded to before, leadership
22 matters. And I want to respectfully remind this Court that it
23 was I who recommended back in 2016 as the department's chief
24 internal monitor in my Q3 2016 use of force orders report,
25 dated December 5, 2016, I recommended then, in writing, in my

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1 first 100 days as then the chief internal monitor, and I quote,
2 "If the department continues to manage operations under the
3 current structure, it is likely that our current rate of force
4 would either remain the same or increase."

5 I would not have thought back then that the department
6 would have reached the state that it did in calendar year 2021,
7 having over 8,000 use of force incidents.

8 I went on to recommend a change in leadership that
9 would allow the then commissioner to externally hire executive
10 staff to perform operational functions. And I can assure you
11 this position did not endear me to my colleagues and was not an
12 easy recommendation for me to put in writing.

13 But given the prior administration's unwillingness to
14 seriously consider the idea, it had to be officially documented
15 in my auditor's report. I knew then, like I know now, that it
16 was what was needed to be done, but the prior administration
17 lacked the will to do it, and this placed the department in the
18 state that it is in today.

19 The difference between today, your Honor, and calendar
20 year 2016 is that now I am the commissioner. And I can assure
21 this Court that I will exercise my power as commissioner to the
22 maximum to address the ongoing issues in this agency. I have
23 shown in the short time that I as commissioner am willing to do
24 so. From taking immediate action to issues raised by the
25 monitor to ensuring that all discipline cases are handled not

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1 only as expeditiously as possible, but departing upward when I
2 do not agree with the OATH judges and believe that termination
3 is warranted for the offense and the good order of the
4 department, to also terminating nonuniformed staff that, either
5 through their inability or willingness to be bystanders,
6 allowed through their collective inaction the department to
7 continue to deteriorate while talking a good game publicly and
8 taking no action despite being in executive positions of
9 authority.

10 Your Honor, that is not me. And I am asking that I be
11 given the time to work with the monitor, as I did with the
12 monitor in Westchester County, which allowed Westchester County
13 DOC to be released from federal oversight agreement.

14 The monitor has stated in his most recent status
15 report and I quote, "An option that may offer a viable pathway
16 for the city and the department to retain management of the
17 city's jails is to immediately begin taking concrete steps to
18 actually implement the monitor's team's recommendations and for
19 the city and the department to immediately and aggressively
20 remove all barriers to the implementation of initiatives that
21 are necessary to bring safety and stability to the jails."

22 Your Honor, that is exactly what I am doing and intend
23 to continue to do through my powers as the commissioner. These
24 barriers will be removed.

25 In closing, I add that I truly believe that the

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1 monitor and I are aligned. We may debate processes and
2 implementation strategies, but what I think of what he did as
3 young lawyer fighting internally against the state of Texas
4 prison system starting back in 1972, your Honor, that was me in
5 2016 when I first entered the New York City Department of
6 Corrections as a chief internal monitor.

7 I am fortunate that with a new mayor I was given the
8 honor to be appointed commissioner and lead the heroic
9 Department of Corrections staff, the majority of whom came to
10 work during the height of pandemic and continue to do so today.

11 The women and men of our department that stayed in the
12 fight deserve to be recognized, and I am here as their
13 commissioner fighting for them too. They deserve to be treated
14 with dignity and respect, and every day I fight for them
15 because they too deserve to work in a place that values them as
16 people.

17 Your Honor, let the monitor and I implement the reform
18 that has been long overdue. I assure this Court you will see
19 change.

20 I hope I'm not speaking out of turn, Mr. Martin, when
21 I state matter of fact that we have not crossed a point of no
22 return. You and I together can get this done.

23 Thank you, your Honor, for giving me a few minutes
24 just to make an opening statement. I am available for
25 questions if you have any.

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1 THE COURT: Thank you, Mr. Commissioner.

2 I just have two specific follow-up questions for you
3 right now. You indicated that you have broken up gang-based
4 housing. It is my understanding that has developed into a
5 pervasive problem across facilities. Are you saying that that
6 has been eliminated across facilities?

7 MR. MOLINA: Yes.

8 So what I would tell you, ma'am, is that the
9 recommendation made by the classification consultant that was
10 recommended by the monitor recommended, one, that we
11 discontinue use of the hub that was part of the contributor to
12 created gang-affiliated housing.

13 And what we've done is I have ordered the custody
14 management team to rebalance the housing units starting with
15 RNDC and not house individuals by gang affiliation. That has
16 been done at RNDC and is being undertaken at other facilities
17 as well.

18 THE COURT: So that has been accomplished at RNDC?

19 MR. MOLINA: Yes, your Honor.

20 THE COURT: And it's currently in progress at the
21 other facilities?

22 MR. MOLINA: Yes, your Honor CHECK.

23 THE COURT: Thank you.

24 When you refer to credible messengers who are able to
25 get access, would you explain that to me? I'm sorry. I just

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1 can't correlate your terminology.

2 MR. MOLINA: Yes, ma'am.

3 So credible messengers are individuals that have
4 similar and alike lived experiences, to include having been
5 justice involved, and in many cases individuals that spent a
6 good part of your young adult life incarcerated up to as long
7 as 20 years.

8 Based on the department's prior policy, these
9 individuals, because of their criminal records, were not
10 allowed access to the facilities, but have done a tremendous
11 amount of work in turning around their lives and are quite, I
12 think, inspirational to the young men that are in our custody.

13 So what I did was, when I heard about the situation
14 from nonprofits that are providing services, I immediately
15 changed the policy allowing for 17 credible messengers
16 specifically to do work at RNDC so that they can engage with
17 young men, because they have the same, similar, and alike lived
18 experiences and come from the same communities that many of
19 these young men come from.

20 THE COURT: Is this a specific program of mentoring,
21 meetings, or is this that the workers from the nonprofits who
22 come in to do various things can include people who were
23 formerly incarcerated?

24 MR. MOLINA: So, your Honor, I would say that it is
25 both right. So we have nonprofits that are doing ongoing work,

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1 and now the inclusion of these credible messengers in that work
2 I think adds a lot of value.

3 In addition to allowing the credible messengers access
4 to engage with the young men either as groups or when necessary
5 one on one, to sort of, to sort of be mentors and navigators
6 for them as they're going through their justice involvement.

7 THE COURT: Thank you, Mr. Commissioner. That is all
8 I have for questions at the moment.

9 Ms. Joyce, did you wish to say something further?

10 MS. JOYCE: No, your Honor. Thank you. Not at this
11 time.

12 THE COURT: Thank you.

13 So I will now turn to Ms. Werlwas.

14 MS. WERLWAS: Good afternoon, your Honor.

15 Although the experiences of the plaintiff class and
16 the harm and injuries that they are suffering under the current
17 practices of this administration are truly at the heartland of
18 what we're doing here today, I am not going to restate the
19 facts of the harms and the violence in the interest of time
20 because those are very well detailed in the monitor's reports.
21 We know that your Honor appreciates the gravity of the danger,
22 and that's why you've called this conference.

23 The city's letter of last night was helpful in
24 clarifying the city's commitments to change and in beginning to
25 answer some of the questions that we have raised both in the

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1 discussions the last six weeks since the March 16 report and
2 indeed for about the last seven months, since these are in
3 essence, in great part issues that we all began to address last
4 year.

5 We understand the monitor and the city will have more
6 refinements and ideas to propose. And to be sure these are
7 likely beneficial steps to improve the agency. We would like
8 to be optimistic that these measures will yield fruit.

9 But unfortunately what has transpired in 2022 alone
10 seriously constrains the reasonableness of optimism. In short,
11 what the city describes in its letter last night is too little
12 too late.

13 We can't do anything about too late, but we can do
14 something about too little, and we can learn not to repeat the
15 mistakes going forward of waiting too long to meet the moment.

16 What we have seen so far, and this is based upon the
17 articulation of the city's commitments and their understanding
18 of the monitor's recommendations, tells us that these steps are
19 not sufficient to protect the plaintiff class at this juncture.

20 And here's why: The processes that are described
21 here, while again important, are variations of themes that we
22 have encountered in the past and business as usual,
23 articulating policies, schemes, timelines, and plans on
24 discrete tasks, all of which are of course part of decision
25 making. But they avoid the fundamental, large-scale failure of

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1 political will and capacity that has doomed these same efforts,
2 the same excellent timelines for years.

3 The heartland, but certainly not the entirety of the
4 monitor's proposals, and, as best we can tell, the city's
5 response to them, advance in useful ways some of the measures
6 for reform that were articulated in the second remedial order
7 and to a lesser degree in the third remedial order.

8 But that was seven months ago that we negotiated and
9 entered those orders for what was meant to be at the time the
10 most feasible jump start to reform and not the longitudinal
11 answer. So here we are, seven months later, being asked to
12 give more time to hear, for example, about the city's view of
13 what impediments may lie in the way of external hiring. We are
14 asked to give 30 days to commit to developing a proposed
15 timeline for a plan.

16 But these staffing deficiencies, deployment, security
17 lapses, these have been identified by the monitor months if not
18 years ago. While, of course, all action must be based on
19 planning, it is simply too late for us to be agreeing to long
20 timelines for developing policies or proposals or timelines to
21 deal with legal impediments.

22 The second, though, area in which, what raises great
23 concerns for us about the ability of the current proposals on
24 the table whether articulated robustly or narrowly is that,
25 most critically, the city's plans lack a fundamental agreement

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1 or commitment to give authority to accompany the expertise that
2 is sought to be imported into this agency.

3 The city has had some of the benefit of technical
4 expertise from some of the top professionals nationwide, with
5 Pelly Datol, Emmet Smartman, Patrick Hurley among the subject
6 matter experts giving expertise to our city not to mention the
7 monitoring team members who are on this call and not on this
8 call.

9 There is no question whatsoever that introducing
10 expertise and professional and technical competence to the
11 department is of utmost authority. But what we have not seen
12 articulated in the city's plans and what frankly we see read
13 out of them is the authority for these individuals to enact the
14 necessary scopes of reform in these respective areas.

15 We do not see what authority a staffing manager would
16 have to get individuals from their homes and into the
17 workplace. Would a staffing manager have the authority to do
18 away with this nonsensical requirement that the deputy monitor
19 described of demonstrating that an employee has not come to
20 work?

21 Right now, it is our understanding -- and, please, the
22 commissioner could correct me if I'm wrong -- there are
23 unstaffed posts in these jails, and there are housing areas --
24 our clients called us yesterday from housing areas where they
25 are not being let out of their cells because there is no one

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1 there to do it.

2 This is a fundamental, immediate problem that we do
3 not see the authority to answer these questions, to say we need
4 someone on that post, forget about 40 knocks, forget about 20
5 knocks. We need something fewer.

6 Nor do we think the process of negotiating -- I think
7 that gives a great example, that there is not time and the harm
8 is too great for us to go from 40 knocks. Let's try 30. Let's
9 try 20. Let's try 10. Who can do that?

10 That is no longer reasonable, given the facts of this
11 situation. What we need is relief that can address these
12 structural problems in the way city government runs, that
13 create impediments for even the best willed commissioner of
14 correction to implement reform.

15 We can discuss the specific proposals as needed as we
16 go down the agenda, but I wanted to make just two final global
17 comments.

18 We are deeply concerned about the lack of any clarity
19 on where these individuals who might be hired would fall in the
20 chain of command in New York City. Our understanding of the
21 monitor's recommendations over the years has been about the
22 need to increase the expertise and authority of uniformed
23 leadership.

24 These are paramilitary organizations. Uniforms
25 matter. Rank matters. We were deeply distressed in fact to

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1 see the city's letter last night describing what we had hoped
2 to be a discussion about hiring wardens externally has devolved
3 into something that is akin to a consultant to the commissioner
4 to give advice but not to supervise a uniformed staff.

5 It is pointless to negotiate authority about the names
6 and scope of positions if those individuals' responsibilities
7 are not clear or who they answer to is not clear. If these
8 individuals can be fired when political winds change, then
9 we're wasting our time in even negotiating further about their
10 jobs.

11 We already have seen and we cannot ignore that this
12 already has been our experience with last November, negotiating
13 for the position of a disciplinary manager, which was to be a
14 new infusion of a role and a realignment of roles. Within six
15 weeks after that order, that person was dismissed for no bona
16 fide reason.

17 We absolutely cannot leave silent those questions that
18 we can see have already hampered reform and are part of why
19 we're in the circumstances we are today.

20 And those are not just details missing from these
21 plans, but these are the fundamental questions that we don't
22 see evidence the city has grappled with or is prepared to
23 grapple with. There's not an easy answer, which we want to be
24 clear that there is not a simple fix, that there are actual
25 operational changes that must be made, given the intransigence

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1 and unwillingness of this agency to follow this Court's orders
2 must be addressed.

3 The reforms that are underway absolutely should
4 continue, but parallel tracks are necessary. For any remedy to
5 have a chance at being effective, it must be given the
6 requisite authority and competence and resources to perform
7 this essential function of city government that we are being
8 asked to do.

9 And a reasonable reading of the record of these last
10 six years tells us that business as usual, that timelines and
11 proposals that defer facing the very difficult questions of
12 labor law, of employment law, and the civil service law simply
13 kick the can further down the road and can no longer be
14 tolerated.

15 It is time in this conference right now to address
16 those issues. We should be talking about labor law. We have
17 to be talking about labor law.

18 We should be talking about civil service law. We have
19 to be talking about civil service law.

20 Very important policies. Very important laws. But
21 this has been known for a long time, and it's far too late to
22 say let's see what those impediments can be and how we can work
23 around them. That was long ago.

24 These are stubborn facts. They're difficult facts.
25 But they are the reason why we are all discussing what options

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1 must be considered. That's why a receivership remedy is on the
2 table as a meaningful and effective possibility to address the
3 problems of reform that have not been redressable over these
4 last six years.

5 We need to break the stalemate. We think that many of
6 the ideas and the incredible contributions the monitor has
7 proposed and continues to work on with the city are incredibly
8 beneficial to New York City, and it is essential that they be
9 allowed and empowered to continue this work because the city
10 needs it. And this department needs it.

11 It also, however, needs the ability to make this
12 happen in our city.

13 Thank you.

14 THE COURT: Thank you, Ms. Werlwas.

15 In speaking of these specific statutory types of
16 impediments, do you have particular ideas as to how to deal
17 with those barriers short of receivership?

18 MS. WERLWAS: I think, your Honor, that depends upon
19 the nature of receivership, as I say, when using that
20 receivership, which is itself a flexible remedy that can look
21 many different ways.

22 So I want to be careful in answering that. It sort of
23 implies a shared understanding of what receivership is that we
24 have all not explored at this point. In exploring it, it would
25 have to be responsive to the needs of this case, this city,

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1 this agency right now.

2 I will say this: We have long sought and looked for
3 the answers to whether this workforce can be managed in a way
4 to allow the Court's orders to be implemented within the
5 confines of the current collective bargaining agreements and
6 the many layers of paint that I think they have surrounding
7 them by city practice.

8 We have sought time and again the city's view, because
9 we think frankly that's the most important one. What is their
10 view of their powers as -- the city as employer. And those
11 have been poorly articulated to us or poorly understood.

12 We think that we can't wait any longer for that. As
13 we understand it, however, our view is that implementing some
14 of these reforms and curbing abuse of sick leave, for example,
15 and allowing proper deployment of the staff does necessarily
16 require changing some settled labor practices. I'm not in the
17 position to get into the minutiae of labor law, of what a state
18 court's view might be on that.

19 I think what we all agree is that we simply cannot be
20 bogged down in waiting for or let the delay inherent in waiting
21 for adjudications about is the 40-day requirement a requirement
22 of labor law or just a practice that can be jettisoned? Is
23 unlimited sick leave impeding the federal court review? These
24 cannot be done on a case-by-case basis. For this reason we
25 think that the -- I don't think we can say the -- I don't want

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1 to have such a failure of imagination as to claim the exclusive
2 path is receivership.

3 I can tell you that, having given enormous thought to
4 what other path there is through this thicket, that it is not
5 just a question of will, but that that is the only path that we
6 can see based on our understanding of labor law, and nothing
7 about our extensive discussions with the city over the years
8 has given us a vision that shows a path that goes elsewhere.

9 THE COURT: Thank you, Ms. Werlwas.

10 Now, I will turn to Mr. Powell for the U.S. Attorney's
11 Office.

12 MR. POWELL: Thank you, your Honor.

13 I am not going to get into this in so much detail, but
14 we of course share everybody's concerns and continue to be
15 gravely concerned about the unsafe conditions at the jails and
16 the extremely high level of violence at the facilities,
17 including not only the use of excessive force by correction
18 officers against inmates, but also the attacks by inmates on
19 staff and the utterly brutal inmate-and-inmate altercations
20 that the monitor continues to report to us, which often involve
21 the use of dangerous weapons.

22 Inmates in the jails currently have access, seem to
23 have ready access to weapons and other contraband. In their
24 submission yesterday, the department referred to the recovery
25 of over 2,000 weapons since February, which is definitely a

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1 great thing, but it begs the question of how are these weapons
2 getting into the facilities, and what is being done to address
3 that.

4 Housing units continue to be unmanned. The staff
5 absenteeism rates continue to remain at alarming levels, and
6 correction officers are reportedly scared to show up at their
7 assigned posts.

8 I think we all agree -- and that's not why I am not
9 going to spend so much time on this -- the system is in a very
10 dangerous and unsafe condition.

11 While the problems at Rikers have never been worse in
12 our view, the systemic deficiencies that the monitor has
13 identified are nothing new.

14 They have been reported almost the same way in each of
15 the last several reports that were submitted with the Court,
16 and the Department of Correction has been a dysfunctional
17 agency for decades.

18 Over the years commissioners and mayors have come and
19 gone. While well meaning, all set forth plans to try to make
20 changes, but all have largely failed to implement lasting and
21 sustainable reforms.

22 We have no doubt that Commissioner Molina is dedicated
23 to reform. This is not about his will, his credentials, or his
24 desire. This isn't about the administration's desire to make
25 change. The concern here is that there is a deep seated

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1 culture of violence and incompetent management that has
2 persisted over decades at this agency.

3 It is not an issue of resources we know. The monitor
4 has reported that this department has more resources than any
5 other correctional system he's ever dealt with. They have
6 2,000 more uniformed staff than inmates. They spent over
7 \$550,000 per inmate on average in the last fiscal year, more
8 than three times the next highest city. And yet the average
9 number of fights and staff assaults are seven or eight times
10 more than other systems.

11 We understand that Commissioner Molina and the mayor
12 have only been in their current positions for a few months, but
13 as you said earlier on, we just can't agree to continue to hit
14 the reset button on reform efforts each time an administration
15 turns and wait for the development of a new written plan the
16 rollout of a new initiative.

17 The city must now take a very new and different
18 approach to the obstacles that have clearly impeded very
19 similar plans to what Commissioner Molina and Mr. Martin have
20 talked about today.

21 Like the monitor said, we have to deal with the
22 bureaucratic red tape, but more specifically, we have to -- the
23 city has to, not the monitor, but the city has to and the
24 department address the perceived legal limitations, the labor
25 rules and the absence of a sufficient number of top uniformed

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1 staff with the necessary corrections experience and management
2 experience to get these reforms done.

3 I want to just talk about a few specific questions and
4 issues that relate to that issue of addressing the underlying
5 obstacles, and we would love to hear responses from the city or
6 their counsel today. But we have talked today about everyone
7 seems to agree the department needs to hire outside external
8 folks, nonuniformed staff with necessary correctional and
9 management expertise to oversee the jails.

10 The city's position since the monitor made this
11 recommendation back in last May, almost a year ago -- and we
12 talked -- this was the main topic, I think, at the last
13 conference before your Honor back in December. The city's
14 position has been we perceived some legal limitations. There
15 are laws that prevent us from doing this.

16 We asked them, as your Honor is aware, to consent to
17 an order that your Honor would sign to basically allow the
18 commissioner to hire these folks notwithstanding any law that
19 may be viewed to prohibit it. That is possible under the PLRA.

20 The city under this commissioner's administration in
21 late January refused to consent to that order. The monitor
22 continued to push for the hiring of these external candidates.
23 And here we are in late April and in the submission yesterday
24 we hear about for the first time a plan that was presented to
25 the monitor yesterday that talks about these new hires who

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1 won't directly manage matters of care, custody, and control but
2 will instead be able to make recommendations.

3 We don't understand, you know, what that means. It
4 hasn't been presented to us. But this doesn't sound like the
5 type of setup where we will bring in people and attract the
6 best candidates to come in and address what are clear security
7 deficiencies and unsafe corrections practices.

8 There is this response to your Honor's last question
9 to Mr. Werlwas, is there are other way besides a receiver,
10 right? The Court could issue an order. The city can consent
11 to an order to direct them to make these hires notwithstanding
12 any law that may impede them.

13 So far the city hasn't consented to that order. If
14 they can do it in a legal way without putting aside that law,
15 then so be it. That would be great. But here we are almost a
16 year after the recommendation, there's no candidates who are
17 being lined up, there's no method really to find these people,
18 and, you know, we're still waiting.

19 This is a core part of the reform. Nothing that the
20 monitor recommended in our view can happen if -- competent,
21 qualified, experts come in and an infusion of talent to run
22 this system in a far different way than it's been run over the
23 last decades.

24 Another issue that we would love to hear from the city
25 on is the monitor has found a culture that allows staff to

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1 circumvent assignments to particular housing units. In plain
2 out language that means the commissioner, Commissioner Molina
3 and his predecessors don't have the discretion to assign their
4 staff where they need them. They don't have absolute
5 discussion to do that.

6 I assume and I know Commissioner Molina wants that
7 discretion. Any commissioner would. We know from the
8 monitor's report, the most senior and experienced staff are
9 often not assigned to housing units at all.

10 A large percentage of captains, the frontline
11 supervisors at this agency, are assigned to positions that
12 don't involve supervising housing areas. That can't work.

13 The question for the city is, how are they going to
14 make sure that the commissioner has the power and authority
15 within the current system to assign staff where they're needed.

16 There is an issue that we have talked about with the
17 city about the awarding of posts, to have to bid to get awarded
18 posts. Does that mean that these staff cannot be reassigned
19 based on the clear need? Many, many unmanned staffs every day,
20 when the monitor went out to one of the facilities I think last
21 week, maybe early this week, he found unstaffed posts.

22 Can the commissioner, does he have the discretion now
23 to assign senior staff or captains to those posts? And, if
24 not, what specifically can be done to avoid any labor rule or
25 other legal or bureaucratic obstacle to getting that kind of

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1 common-sense authority?

2 A couple more points, and then I don't want to take up
3 too much time. There are hundreds of staff currently on
4 extended sick leave, or on what's called medical restriction
5 status, so they can't be assigned to housing posts where they
6 interact with inmates, right?

7 The city has more than 2,000 officers and inmates.
8 Many can't be assigned where they're needed.

9 So what is the department going to do specifically to
10 scrub those lists of unavailable staff? They have some issues.
11 They have a CBA that requires unlimited sick leave. They have
12 a very bureaucratic and lengthy procedural process to
13 discipline staff.

14 They can't suspend any staff for more than 30 days
15 without pay. They then have to come back then and then they
16 have to go through a lengthy disciplinary process that the
17 monitor's detailed can take two, three years.

18 What is the city -- more the city than the department
19 in this case -- going to do to remove those obstacles so
20 officers and captains who are medically able to work come back
21 and work?

22 A fourth issue is how is the department going to
23 promptly hold staff accountable when they abandon their posts,
24 which we know they do, or use excessive or unnecessary force?

25 Most officers don't do that. Most officers are doing

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1 their best in an extremely dangerous condition. They are
2 working doubles, sometimes triples. We are talking about the
3 staff that don't. How can the monitor, given the limitations
4 on how he can discipline folks, deal with that issue so that
5 those folks are disciplined and potentially removed from the
6 workforce and that their brother and sister correction
7 officers, you know, don't feel like they are the only ones
8 coming to work.

9 Lastly, procurement issues.

10 How is the department going to promptly address the
11 clear disrepair in these very old facilities that are resulting
12 in basic security risks to inmates and staff?

13 As you probably know and everyone here knows, the
14 city's processes for securing supplies and repairs is extremely
15 lengthy.

16 Is that an impediment to getting things done, like
17 fixing nonworking cell doors? And, if so, what can be done to
18 address it?

19 One option that we raised in our submission to the
20 Court on April 29 to deal with bureaucratic red tape, to deal
21 with perceived legal and regulatory obstacles, is the
22 appointment of a federal receiver, who would have broad and
23 independent authority to implement the reforms and take the
24 necessary actions to finally deal with the systemic issues and
25 bring this department into compliance with the six-year-old

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1 consent judgment.

2 There may be other options. We would be happy to hear
3 from the city how they can deal with maybe those four or five
4 issues that I just flagged. Maybe there is a way through other
5 court -- for a court order to remove some of these legal
6 impediments. But we need to deal with the realities. It's not
7 about the Commissioner Molina's desire, his competence, his
8 qualifications, his commitment. We don't doubt any of that.
9 We need to deal with what's been an obstacle to reforming this
10 deeply troubled agency for decades.

11 The government is currently giving serious
12 consideration to a receivership option, including the
13 authorities and powers that a potential receiver would need to
14 have to effectively take all steps to achieve compliance and
15 address what amounts to an ongoing daily constitutional injury
16 to the inmate in these jails.

17 We would ask -- and the monitor or the deputy monitor
18 mentioned this early on, that we understand they are working on
19 a plan, an implementation plan. Again, we hope that that is
20 going to specifically address these issues that I flagged today
21 and the others in our submission.

22 We would respectfully request that that implementation
23 plan or whatever the monitor proposed after the deliberations
24 and discussions over the next three weeks be submitted to the
25 Court and that a status conference be scheduled in three weeks

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1 or as soon as your Honor is available to discuss what is in
2 that plan. We still don't know.

3 We also would request that, to the extent their
4 resources permit, and their resources are stretched because the
5 department is relying tremendously on the monitor and his team
6 to develop this plan, which says something in and of itself,
7 but we would respectfully request that if the monitor is able
8 to and has the resources that they continue what they have been
9 doing recently, going out to the facilities, touring the jails,
10 and seeing -- or at least plans that are written on paper or at
11 least things that we are hearing about in these court
12 conferences, these things that we are being told about at
13 meetings. Are they being translated into actual operational
14 practices? Are posts adequately staffed? Are security
15 protocols being followed? And whether these dangerous horrific
16 conditions in these jails are being addressed. We think that
17 that type of insight would be invaluable to determining what
18 are the appropriate next steps here.

19 Thank you very much, your Honor.

20 THE COURT: Thank you, Mr. Powell.

21 Ms. Joyce, Mr. Commissioner, did you wish to say
22 anything before I turn back to the monitor and deputy monitor?

23 MS. JOYCE: Just a few quick points to just address
24 some things that Mr. Powell and Ms. Werlwas said.

25 One, the receivership word has gotten bandied about.

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1 Receivership restarts the clock, and that is not something that
2 any of us wants. A receivership is not a panacea to the ills
3 that are occurring at the department right now.

4 Your Honor, we will address the Department of
5 Justice's concerns in the implementation plan that is being put
6 together between the monitoring team and the department and the
7 city of New York.

8 One other point I want to make is that the labor
9 experts of the city of New York here at the law department and
10 at the office of labor relations, we have thoughtfully
11 considered greatly all of monitor's recommendations, and they
12 can be accomplished, each one can be accomplished within the
13 city of New York and the Department of Correction
14 commissioner's authority, and a receiver is not needed.

15 It is because this administration, this mayor of New
16 York and this commissioner have the will to do the things that
17 need to be done that the dramatic changes and reform that need
18 to happen are going to happen and a receiver is not necessary.

19 The commissioner has nothing to add, your Honor, at
20 this time. We will turn it back to your Honor.

21 THE COURT: Thank you, Ms. Joyce.

22 And I will now turn to the monitor and deputy monitor
23 to provide a more specific picture of what's going on and
24 what's contemplated and what I am being asked to do today.

25 MR. MARTIN: Yes, your Honor.

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1 As I think has been set out, we are in virtual daily
2 communication with DOC and the law department to develop more
3 specific remedies.

4 As Mr. Powell I think rightfully called out in very
5 practical terms, such as the ability to assign officers where
6 they are needed, those things have to be fleshed out.

7 And I would add this: I think the commissioner is
8 going to be listening very carefully to this, because it's -- I
9 don't know that I am ahead of him on this. There are actions
10 that he could take and/or announce between now and three weeks,
11 when we present a plan, just as he did with the RNDC emergency
12 action plan, that I believe would move toward real serious
13 concerns of the LAS plaintiff class and the Southern District
14 of New York.

15 What they want is performance. They want things put
16 into place that will have some immediate -- you know, abatement
17 a measurable effect on the conditions.

18 The commissioner is very I think adept and quite
19 frankly attuned to that approach. So I guess what I am doing
20 is making a plea to him, and if he and I need to confer on
21 these -- I believe there are things he could do with some
22 greater immediacy, even while we are talking about this
23 implementation plan, that would give some confidence to the
24 plaintiffs and SDNY that this is a new day.

25 I don't know whether, Commissioner, you want to

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1 respond to that or not or whether what I have just suggested
2 resonates with you or not.

3 MR. MOLINA: Yes. Thank you, Mr. Martin.

4 Like I said in my statement, we are in alignment, and
5 I don't need to wait three weeks to take some action. As you
6 and I talk over the next coming days, there are some of those
7 things that we are going to be taking action on that are going
8 to be meant to be part of the implementation plan. But I am
9 not going to be waiting around for that plan to be shared with
10 the Court in order to do it.

11 MR. MARTIN: Yes. That's what I am talking about.

12 Yeah.

13 So, to the extent that that can occur, I think it
14 gives some credence to the new administration that this is a
15 different approach than we heretofore have seen. I can only
16 say every time I have called on the commissioner for some
17 specific attention or remedy or attention, he has stepped up.

18 Now, obviously, the agency can't sustain necessary
19 reform with a monitor calling to the attention of the
20 commissioner things that he's seen. But I think the
21 commissioner is well on his way to getting up to speed to be
22 ahead of me.

23 That is where he needs to be. He needs to be ahead of
24 me. He needs to be more attuned and more aggressive and more
25 able because he is in a position to effectuate these changes.

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1 I can only give you one example, that back in February
2 I was very concerned with RNDC and the violence there. And as
3 I was contemplating what to do, when to reach out, before I
4 could do that, he initiated a plan of his own accord without me
5 calling him out to address that.

6 That's impressive. That heretofore has been a rare
7 instance where I have had a commissioner be ahead of me. I
8 want to be behind the commissioner. I don't want to be ahead
9 of the commissioner. And I think that he wants that too.

10 While he's open to conferring and welcomes my input, I
11 know him well enough already to know he wants to run the
12 agency. But he's going to have to put things in place that
13 give some confidence that he knows what the hell he's doing.
14 Thus far I think he does.

15 So I think he's -- I am just making a pitch for -- the
16 next three weeks I think are going to be very critical, you
17 know, extremely critical not only for the plan but what occurs
18 between now and three weeks.

19 Because the plaintiffs' attorneys are first and
20 foremost, as they should be, concerned with immediate harm to
21 their clients, people that are suffering from unchecked
22 violence etc. They cannot wait for plans to be implemented.
23 That's what we're hearing from both of them. They have been
24 very consistent.

25 I wouldn't take issue with anything that Mary Lynne or

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1 Jeff has said.

2 I apologize, your Honor, for that rant.

3 Thank you.

4 THE COURT: Thank you, Mr. Martin.

5 I hear quite clearly that I am being asked to set a
6 submission date and conference shortly thereafter in the time
7 frame of about the next three weeks. I am going to have to
8 flip out screens and look at my calendar, but are there other
9 specific things that we can discuss today.

10 Ms. Friedberg's hand is up, so you have the floor.

11 MS. FRIEDBERG: I am happy, your Honor, to go. I was
12 just going to discuss logistics with you to share specific
13 dates, but I do not want to interfere with any substantive
14 questions you have first. But I am happy to share with you the
15 specific date request that the monitoring team has when we come
16 to that.

17 THE COURT: If that is the next step that you are
18 prepared to give us today, and you are asking that we -- well,
19 let me put it this way. Are there any more details of the
20 subject matter or structure of the discussions contemplated
21 over the next three weeks that you're willing to share?

22 For instance, in the letter that was filed, I think it
23 was yesterday, on the 25th, you had particular data points on
24 what you believed needed to be done right away on maximizing
25 staff. You had a discussion of how to get and what sort of

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1 highly qualified staff ought to be retained.

2 Is it fair and appropriate for us to expect that these
3 seven points in your April 25 letter will be the principal
4 subjects of the discussions leading to a plan that will be
5 proposed in the next three weeks, or is there some other
6 conceptual or specific issue platform that you are expecting to
7 work with?

8 MS. FRIEDBERG: Your Honor, it is a combination.

9 So the letter that we submitted yesterday with the
10 seven points were intended to focus the city of New York on the
11 issues that we believe are important to address with the
12 department.

13 It would be in conjunction with what I would call a
14 plan for the various operational components that the department
15 is going to take. In some ways it's so interrelated that it
16 can be hard to separate, but we recognize with this group and
17 the complicated nature of all of the various moving pieces, we
18 were trying to focus the city on those seven items.

19 They are definitely complimentary, if not entirely
20 consistent with a more detailed plan of the work that the
21 department is going to be doing. The work that the department
22 is doing is connected to our recommendations in the special
23 report.

24 I am certainly happy at this juncture to walk you
25 through kind of the subject headings of what we are working on

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1 and how it would look. But with respect to that particular
2 letter, and it may just be a finer point on Mr. Martin's just
3 last statement, which is in the next three weeks we certainly
4 look forward what the commissioner is going to do, but we are
5 also equally interested in seeing what the city of New York is
6 going to do.

7 We are no longer interested in hearing conversations
8 from the city about how they cannot do things. So I just
9 want -- and I know that Mr. Martin was intending to make that
10 very point as well.

11 MR. MARTIN: Thank you.

12 MS. FRIEDBERG: I am bringing it together and taking
13 it a home run as our team effort here. But I will say that
14 that letter in particular was intended yesterday to go right to
15 the heart of the city of New York.

16 If there are no impediments to these issues that we
17 now are learning, then they should be doing them forthwith and
18 we should no longer be on phone calls where I have multiple
19 lawyers telling me that our ideas cannot be implemented with no
20 reasonable alternative.

21 MR. MARTIN: We are exhausted of that. We are
22 exhausted. The plaintiffs are exhausted. We are all exhausted
23 of that. Quite frankly, if that's what I hear between now and
24 three weeks from now, I am going to be before your Honor with a
25 definite recommendation as to that. Because -- well, enough

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1 said. Thank you.

2 MS. FRIEDBERG: So, your Honor, the implementation
3 plan would be a combination. What we expect to see is
4 commitments and work from the city with respect to how it's
5 going to support the work of the department.

6 You know, the commissioner obviously reports to the
7 mayor. How can the commissioner be empowered to do the work
8 that he needs to do? The implementation plan at this juncture,
9 it is a draft. It is 18 pages long. It enumerates the variety
10 of different issues that are raised in our special report
11 recommendation. So I will just run down the big headings so
12 that you have a sense of what we are looking at.

13 Section 1, addressing immediate harm. How can we
14 implement things now to address the immediate harm?

15 Section 2 is related to uniformed staffing practices.
16 That has two components to it. The first component are things
17 that can be taken right now to address staffing issues that we
18 believe the commissioner and his staff can address immediately.

19 The second sort of component of staffing certainly is
20 going to take longer. There are some longer term initiatives
21 that are going to require them to bring in some expertise, and
22 so we've tried to synchronize those with what can start now,
23 what can be done later -- or not later, beginning now, but we
24 know cannot have an immediate impact.

25 Section No. 3 is with respect to overarching security

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1 practices. That relates to the security operations manager and
2 the work that falls under the security operations manager. And
3 in the particular security initiatives, I will give you one
4 example because you probably are very familiar with it, which
5 is a focused effort with respect to search, the department's
6 policies and procedures related to searches and probe teams.
7 Those have been two driving forces of the issues that we have
8 seen here.

9 Those are just two examples I would like to give you,
10 as well as a corresponding requirement that the able work
11 that's been done by the department's Nunez compliance unit is
12 started to be better utilized in terms of -- for them to be
13 able to proactively identify security issues.

14 Section No. 4 is the department's ability to
15 prioritize management of people in custody.

16 There's three large headings under that.

17 The first is with respect to classification and
18 dispersing SRG affiliates. The commissioner today already
19 described some of the work that is being done in that regard.
20 That flows from the recommendations of Dr. James Austin, who is
21 retained pursuant to the second remedial order.

22 The second heading with respect to this is the work
23 with respect to intake and the department's utilization of
24 intake that flows both from various different security
25 practices, but also from some of the housing practices.

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1 The third and final kind of component under this
2 heading relates to the management of incarcerated individuals
3 following various violent incidents.

4 Section No. 5 -- hopefully I've gotten these numbers
5 correct -- does focus on different work that the department
6 might be capable of doing in order to identify those
7 individuals that have been incarcerated for a year or longer,
8 have been engaged in violent incidents and such that their
9 cases may need to be expedited such that they can be moved
10 through the system more quickly or quicker than where they
11 currently are.

12 The final substantive section relates to staff
13 accountability. I addressed this very briefly in my remarks
14 before, which is with respect to obtaining necessary staffing
15 for accountability.

16 The third remedial order has developed a workable --
17 from what we can see to date as a preview and you have heard,
18 has developed a workable structure for them to get through
19 discipline. They are moving through discipline faster than
20 they have ever been before, probably through a combination of a
21 variety of things, but certainly the fact that they are
22 moving -- they have better capacity. The problem is staffing.

23 And that certainly is going to be one of which we are
24 going to be harkening on and we truly believe that the city of
25 New York needs to help the department identify qualified

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1 candidates to come to the trials division as soon as possible.
2 We live in the land of lawyers in this city, so I can't imagine
3 why -- they have to be able to find people and bring them into
4 this agency to help.

5 And then the final component is working through
6 reporting. As the monitor mentioned at the very beginning of
7 this conversation, we believe at least in the near term the
8 monitoring team's reporting structure must be altered at least
9 slightly so that we are in a position to provide more
10 contemporaneous reporting to the Court that is also equally
11 focused on these issues that I have just described today such
12 that the monitoring team and the department are firmly aligned
13 in terms of how we spend our time and where we do our work.

14 So that's a really -- I am just mindful of time, which
15 is the reason I am trying to rush through this. I'm certainly
16 happy to take any questions you may have with kind of both the
17 interplay of what we are looking for with respect from the city
18 of New York as well as the work with the department.

19 We have been working through these items with the
20 department and the city. They have asked reasonable questions
21 in terms of how to work through it. So that is kind of a short
22 summary of where we are to date on the development of that
23 work.

24 THE COURT: That was very helpful.

25 Mr. Powell, has been raising his electronic hand so

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1 before you go to your next topic, I will call on him.

2 MR. POWELL: I was just seeking clarification either
3 from your Honor or from the city or the monitor. This plan
4 that we are aware that it is being developed, is it
5 contemplated that this will be submitted to the Court to be so
6 ordered by the Court as remedial relief?

7 And I guess that the second, more general point is,
8 you know, to be clear with the Court, you know, I think we are
9 at the point where it's about outcomes and results. And so we
10 would hope that some part of that plan or the reporting -- we
11 know the monitor will include, he always does, and the team
12 always does plenty of data. But the results and the outcomes
13 are what matters most to us and innovative ways to address the
14 impediments that have prevented these reforms from happening.

15 But I would be interested in kind of the vision here
16 if we are going to appear before your Honor in the next three
17 or so weeks.

18 Is this going to be something that is going to be
19 presented to be so ordered by the Court?

20 THE COURT: Ms. Friedberg, what is the concept here?

21 MS. FRIEDBERG: Our proposal, your Honor -- of course,
22 we are hope to what the Judge desires -- would that we would
23 submit a plan within three weeks for the Court should the Court
24 deem it appropriate.

25 We would anticipate that it would be so ordered by the

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1 Court or with any modifications that you deem appropriate.

2 THE COURT: Thank you. That would be my preference.

3 To the extent we are going to talk about dates after
4 Ms. Werlwas gets to speak in a moment, I would prefer for us to
5 have a date for filing of the proposed plan and then at least
6 say three days, four days between then and the conference so
7 that you can confer with counsel for the plaintiffs and counsel
8 for the U.S. Attorney's Office so that you are in a position to
9 tell me at the next conference whether this is a joint proposal
10 or whether there are issues with respect to the specifics of it
11 that you haven't been able to work out in that interim period.
12 So I would expect some very focused meet-and-confer activity in
13 that time gap.

14 And so let me call on Ms. Werlwas and then I will come
15 back to Ms. Friedberg.

16 MS. WERLWAS: Thank you, your Honor.

17 We certainly would look forward to hearing about the
18 city's ideas or plans that they did not articulate already for
19 how they can accomplish these reforms within the existing
20 constraints that they identify.

21 We have seen the benefit of a court conference and
22 don't wish to deprive the monitor, the parties of those
23 benefits. For example, the details we got last night were
24 probably, you know, more detail than we have gotten in the
25 negotiations thus far.

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1 However, we do think it would be remiss to point out
2 that we are very concerned that a plan that essentially builds
3 out what we saw in the letter and does not address the
4 identifying with specificity the cutting edge of where the city
5 thinks it is bound by law, custom, or political will in
6 satisfying its political constituencies to constrain relief,
7 that if that is not outlined right now at this point in the
8 case, then we are also wasting our time, that this is not a
9 question of the commissioner's will or desire, that what we
10 must engage and must resolve finally is the contours of the
11 structures of city governance, of what's permitted, what's not
12 permitted. What, if any, legal constraints do we all have to
13 be aware of? Because it's sort of too late, I think, to do
14 anything less.

15 That doesn't need to await three weeks. These are the
16 conversations that we have been having. We would strongly
17 encourage the city to identify the constraints that it is
18 operating under, such as in its external hiring proposal, in
19 getting staff back to work.

20 Perhaps the way to frame it might be saying what
21 prohibits this very well meaning commissioner, who
22 unquestionably wants every housing area staffed, from getting
23 those areas staffed next week. And there are answers to those
24 questions. But those are the ones that we should know the
25 answers to. And, if not, and if in three weeks we hear a plan

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1 to get answers to those questions, I do fear that these three
2 weeks will have been in vain.

3 THE COURT: Let me ask you something, Ms. Werlwas,
4 before I turn to Ms. Joyce. I think I am hearing two things.
5 One is a question of whether the plan that is going to be
6 presented will be a plan that the city and the department say
7 they are able to deliver on within the understanding of current
8 constraints. So that's one thing I think I'm hearing, one
9 possibility.

10 I also think that I may be hearing a request in
11 addition for one of two things. One might be where might the
12 city be able to go, the city and the department be able to go
13 farther than whatever is going to be proposed, sort of, "Well,
14 this is your offer, but what would be your highest and best
15 offer?" or something like that.

16 If that's what you are asking for, I would like you to
17 put a little more flesh on that, because I am not sure how that
18 works in this context of negotiated plans.

19 The other is, do you want a list of the statutes,
20 regulations, practices that the city has concluded create some
21 sort of boundaries in each of the areas, or is it something
22 else entirely?

23 Long question, but the floor is back to you,
24 Ms. Werlwas.

25 MS. WERLWAS: Well, thank you.

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1 I apologize if I misspoke as to the latter question.
2 No, certainly a list of statutes and labor laws is not helpful.
3 I think that what we see threaded throughout these suggestions
4 is saying we will exercise, you know, all of our power under
5 the law or we will discipline subject to Civil Service Law 75.
6 Understandable, by the way, to identify these constraints.

7 But what they operationally mean, saying how quickly
8 can you discipline somebody? Who will you discipline? What
9 will you do and what won't you do?

10 Without having this, you know, we will take any
11 measure within the law. It's just sort of -- we understand
12 that, that that's where they're operating, but we need to no
13 longer have any vagueness about where they think that boundary
14 lies with respect to each of these operational areas.

15 And, secondly, while the question was not so much of
16 a -- I don't -- we certainly anticipate good-faith negotiations
17 and we know that this monitoring team will also press the city
18 to give its best plans, and I didn't want to suggest that we
19 thought they might come back with something different.

20 What it's about is appreciating the issues we
21 identified in our opening remarks, which is, for any changes,
22 what is the authority that individuals will have and to whom
23 are they answerable, to address whether or not we have made --
24 those are going to be dispositive of us viewing whether a plan
25 has legs and has sort of potential to offer a remedy.

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1 Honestly, we are not certain that -- well, the ones we
2 have seen so far would not, but I wanted to highlight that
3 those would be essential. We are happy to not leave that a
4 mystery, to discuss with the city what we mean if they are
5 interested in coming to an agreement.

6 But we would be remiss if we left the conference
7 thinking that continuing to refine the details of the plan that
8 was put in front of us would meet the moment.

9 THE COURT: Ms. Joyce, would you like to respond?

10 MS. JOYCE: Very briefly, your Honor. Only that the
11 recommendations that the monitor and the monitoring team have
12 put forth that are before -- that will be before the Court that
13 we have agreed to can be accomplished within the legal
14 framework that the city and the department need to operate
15 under.

16 We have already provided a list of statutes and laws
17 and regulations that are applicable to this area to the
18 monitoring team and to plaintiffs, so we can keep being asked
19 what our legal constraints are by the parties, but as to the
20 recommendations that are before you and we're being asked to do
21 and what we think we need to do, that is within the city's
22 legal authority and the department commissioner's legal
23 authority, and it is because we have the will to take these
24 steps that now these things are going to be happening.

25 We are going to take the next three weeks to work out

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1 the specifics of the language and the timeline so that your
2 Honor will have a fulsome report with details before her in the
3 next three weeks and the parties as well to feel confident that
4 this plan is going to take the immediate and drastic steps
5 that's necessary to effect change.

6 THE COURT: Thank you.

7 Ms. Werlwas, is there anything else you would want to
8 say now by way of clarification of the difference between what
9 you have in mind and what Ms. Joyce has described?

10 MS. WERLWAS: Thank you.

11 I do have concerns that the scope of the, quote, plan
12 may be under a process of being sort of winnowing down even as
13 we speak. For example, the recommendations that we had
14 understood are on the table for discussion as a possible remedy
15 were the recommendations of the monitor that for lateral hires
16 as wardens, to put it summarily, but that external hires could
17 be made to serve in uniformed leadership.

18 The proposal that the city has come back with is a
19 different and a more narrow proposal of an external hire in a
20 different capacity. We can certainly talk about the merits of
21 one versus the other. But I am very concerned that even in
22 front of us we see a gap between what I hear the city promising
23 to be working on the details of and what we understood the
24 recommendations to be, and we don't want that process to be
25 repeated.

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1 So too with the role of a staffing manager. What we
2 see is unsettled questions as to what the scope of that
3 person's authority is inside the agency and outside the agency,
4 outside city hall, that person's authority vis-a-vis OLR --

5 THE COURT: Office of Labor Relations?

6 MS. WERLWAS: I'm sorry, yes. I deeply apologize for
7 devolving into acronym land.

8 -- are examples of the questions that we think need to
9 be resolved.

10 I am saying this because we don't want to be -- we
11 want to be as clear as possible about the expectations for the
12 kind of relief that we think is necessary at this moment and
13 that it is not about further details of the city's, you know,
14 letter of last night, but going back to resolving the
15 fundamental questions of will the city exercise political, you
16 know, and legal authority to make the changes in the broader
17 way the monitor has recommended?

18 THE COURT: Thank you.

19 Ms. Friedberg has put her hand up.

20 MS. FRIEDBERG: I just thought it might help for
21 clarity's sake that the implementation plan the monitoring team
22 has worked on is not necessarily limited to items in the city's
23 letter. I had nothing to do with the city's letter certainly.
24 But to the extent it appears there's some confusion of whether
25 or not the city's letter is the framework for the

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1 implementation plan, the framework is what I just reiterated
2 and certainly focused on with respect to what we outlined in
3 our special report.

4 We've taken copious notes and been listening to what
5 the parties have said in terms of their expectations of this.
6 You certainly know our position on these items, and we have
7 made that clear to the city. I certainly anticipate, given our
8 six-year record and the volume of times that we speak with
9 everyone that those conversations will be happening over the
10 next three weeks.

11 So I think with respect to these items we've heard
12 everyone. Certainly to the extent the monitoring team can help
13 move that forward, we will. But I just wanted to clarify that
14 with respect to the plan itself, it is not limited to what the
15 city provided in the letter.

16 I can't speak for the city as to why they itemized
17 those particular items because I don't work for the city, but
18 certainly our plan is broader than that, and the recitation I
19 gave is intended to be the scope of that document and should
20 hopefully address the items the parties have raised today. And
21 if it does not, we certainly are going to have an opportunity
22 to talk about it, but our intention is to do the best that we
23 can to try to usher those and address the very serious concerns
24 that we have highlighted in our various communications to all
25 of you as well as the very thoughtful positions that the

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1 plaintiffs and the Southern District shared today on this call.

2 THE COURT: Thank you.

3 So let's move on to specifics of timing now. Since I
4 am hearing undertakings from the city and the commissioner and
5 the monitoring team to work in a very focused and specific way
6 on both immediate term and somewhat longer term measures to
7 effectively address crisis conditions that we have in the jails
8 now and report those back to the Court and to the plaintiffs in
9 a way that is actionable within the three or so week time
10 frame, I am going to give the opportunity to do that and come
11 up with what is concrete.

12 If there are issues at the meet-and-confer stage that
13 can't be resolved before the conference, we will be talking at
14 the conference about what issues the other parties may have
15 with direction or scope or robustness of whatever is proposed.
16 But it is important to get something that is specific enough,
17 that is committed to enough, that could be actionable in the
18 short term, and to be able to look forward to developments even
19 before that conference, as the commissioner and Mr. Martin have
20 spoken about, that will be moving us in the right direction
21 rather than talking more abstractly and conceptually about
22 whether particular structures will be consistent with earlier
23 articulated goals.

24 So, with that, Ms. Friedberg, what do you have in mind
25 to propose as a timetable? Then I can start looking at my

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1 calendar.

2 MS. FRIEDBERG: Your Honor, we would respectfully
3 request that we would file a proposed implementation plan by
4 Tuesday, May 17. So that's three weeks from today.

5 Given your suggestion of some time for the parties to
6 meet and confer, given that's a Tuesday, perhaps a status
7 conference could be convened the week of the 23rd.

8 Assuming that works for the Court, I think that would
9 give some time for us to meet and confer between then, that
10 submission. That certainly will not stop us. To the extent we
11 need to speak with the parties even before there is a
12 submission, we would certainly do that as well.

13 So that would be my proposal, the 17th as the
14 submission date and a status conference the week of the 23rd to
15 the extent it could be accommodated by the Court. My final
16 request, to the extent it could be accommodated by the Court,
17 would be that the next status conference be convened virtually.

18 THE COURT: So, Ms. Ng, what do we have the week of
19 the 23rd. I know the 23rd itself -- I'm sorry. Ms. Werlwas
20 put her hand up. Do you want to speak before we start looking
21 at dates?

22 MS. WERLWAS: It is part of the looking at dates. If
23 you want to finish looking at your dates sort of first, it was
24 to address some of the dates.

25 THE COURT: Do you have blackout dates during the week

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1 of the 23rd?

2 MS. WERLWAS: No, it's the week prior. Our
3 availability for meeting and conferring, as we would hope to
4 do, would be severely constrained on say the 18th through the
5 20th. So getting the report on May 13, for example, is one
6 proposal, so that we could discuss it at the beginning of the
7 following week, even if your Honor's conference is the week of
8 the 23rd.

9 We understand it is a shorter time to file the report,
10 but in our experience also we all inevitably need to discuss
11 these matters anyway and will be refining them before. So we
12 would ask that the report come May 13 and the parties meet and
13 confer the 16th or the 18th.

14 THE COURT: Ms. Joyce has raised her hand and is
15 shaking her head no.

16 So Ms. Joyce.

17 MS. JOYCE: Thank you, your Honor. I believe not to
18 call out Ms. Friedberg, but I believe she too was shaking her
19 head no.

20 MR. MARTIN: Yes.

21 MS. JOYCE: And Mr. Martin at the implication that the
22 date be moved earlier due to Ms. Werlwas' schedule.

23 We need, the parties and the monitor need the time to
24 insure we get this right, and we should not be rushing a few
25 days due to anybody's except the Court's schedule.

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1 THE COURT: So, Ms. Werlwas, given the strongly
2 articulated need for that period of time, at least that period
3 of time through the 17th and your expectation that you're out
4 of pocket from the 18th to the 20th, that leads me to a couple
5 of questions: One, whether we can give some more flexibility
6 to the monitor and the city within the week of the 16th in
7 terms of filing.

8 The second is, if we do that and the report has to be
9 filed by say the 19th or 20th, which would at least give the
10 U.S. Attorney's Office time to start looking at it if
11 Mr. Powell is not out of pocket at the same time.

12 We then should be looking at a -- could productively
13 look at a conference date that's toward the very end of the
14 week of the -- oh, let's see. The end of the week of the 23rd
15 I am not in the country from Wednesday --

16 MR. MARTIN: I hear that.

17 THE COURT: -- from Wednesday evening until, I think
18 it's the following -- I think I am back -- the following Monday
19 is Memorial Day I think. So I know that I am back in the
20 country by Memorial Day, so it would have to be after that
21 weekend.

22 And Mr. Powell is shaking his head.

23 MR. POWELL: Not to object to that. I think our
24 strong preference would be to go with the three-week deadline
25 and try to find a way to make it work. We really would

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1 strongly prefer not pushing off any conference until after
2 Memorial Day.

3 MS. WERLWAS: We agree, your Honor. Given the
4 difficulties, we do not want the conference later. We should
5 take advantage of your Honor's availability during the week of
6 the 23rd.

7 However -- and if the monitoring team and the city are
8 unable to, you know, produce it before Court before the May 17
9 then so be it. But we want to propose this model of what
10 sounds like it can be radio silence for us between now and the
11 17th and then a report dropped, and then a scurry before court
12 conference doesn't seem to make sense to us given the nature of
13 this case and that what we think would be far more effective of
14 having all parties ideas, views, objections surfaced in the
15 process would be if we -- about specific issues or certain
16 ideas or portions of the report were shared with us as
17 suggestions before it's presented as a fait accomplis on the
18 17th. We actually think that might also lead to a better
19 product rather than being sort of kept in the dark while these
20 concerns are articulated.

21 And so a process whereby the city could inform us of
22 some of the progress along the way would, we think, hasten
23 matters. If that's not possible and there is no willingness to
24 sort of engage between now and the 17th, then so be it.
25 certainly, we would ask all parties to hold the 18th, and we

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1 will talk all day on that day and that when we will confer.

2 MS. FRIEDBERG: Your Honor, the record in this case is
3 clear that we've never kept any of the parties in the dark. So
4 the suggestion that somehow the parties are going to be kept in
5 the dark for the next three weeks is unreasonable.

6 That said, we need to be able to work. I have
7 negotiated with this group for over six years. We need some
8 time to have a concrete response, or, quite frankly, it is
9 going to devolve into something that we have no plan for you on
10 the 17th. We need to of some structure to this.

11 We are proposing three weeks. I understand there
12 might be some scheduling constraints, but that cannot create a
13 dynamic in which nothing concrete can even be developed to be
14 responded to.

15 The parties have been heard for a long time. We have
16 met with them for hours upon hours. The monitoring team has
17 almost met weekly with everybody for them to articulate their
18 concerns and their issues. We need to then have something for
19 folks to react to.

20 If there is a reasonable basis and time allows, I am
21 sure the city and the department will, the monitor certainly
22 will, but we need to be given the flexibility to produce
23 something within three weeks. It is just three weeks we are
24 talking about here.

25 We cannot overcomplicate this issue. It is already

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1 complicated enough. We are asking to produce something to you
2 on the 17th. We will do our best to endeavor conversations,
3 and then we can have a conference the week of the 23rd.

4 Anything more is going to be creating the very issues
5 that have brought us here over six years. We need to have some
6 time to work on these issues, to have concrete proposals. We
7 understand the parties then may have feedback. They have given
8 a lot now. They may still have it. But we need the time to
9 develop it first. We can't finish it if all we are doing is
10 talking all the time.

11 MR. MARTIN: Amen.

12 MS. WERLWAS: We've got to give people something to
13 react to.

14 MR. MARTIN: Amen. Amen. Amen.

15 THE COURT: Thank you.

16 Ms. Joyce?

17 You have your hand up.

18 MS. JOYCE: I apologize, your Honor. I have nothing
19 to add other than what Ms. Friedberg just said.

20 THE COURT: Mr. Powell your hand is up?

21 MR. POWELL: I didn't mean to put my hand up. We have
22 no objection to the monitor's proposal to give them three
23 weeks. I am sure, given history, we will be in some contact,
24 and we have no objection to their proposal.

25 THE COURT: Thank you.

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1 I will not require the floating of potential ideas
2 within the three weeks, although I do expect that there will be
3 appropriate communications and not complete radio silence, as
4 Ms. Friedberg has said. And as I understand from my years of
5 conferring with you all, there are communications, and at least
6 that sort of level communication I will expect to be going on.

7 So, as you might expect, in a week when I am going to
8 be gone for half of it and trying to jam things up in the front
9 end of it, the windows of time I have are limited. I can offer
10 you 2:30 to 4:00 on Tuesday, the 24th.

11 MS. FRIEDBERG: Your Honor, that works for the
12 monitoring team. To the extent it could be a virtual
13 conference, we would appreciate that.

14 THE COURT: Yes, we will do it virtually.

15 MR. POWELL: That is fine for the government, your
16 Honor.

17 MS. JOYCE: And for the city as well, your Honor, and
18 for the department.

19 THE COURT: Thank you.

20 So the proposed plan must be filed on the ECF docket
21 by 5 o'clock on May 17. Actually, we'll make that 3 o'clock so
22 that there is more time for at least the initial review of it,
23 if in fact the meet-and-confer has to be occurring on the 18th.
24 And I will also expect that everybody will make their best
25 efforts to be available for and engage in as much meeting and

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1 conferring and can be productive before we come together for
2 the conference.

3 And then we will hold another conference virtually on
4 Tuesday, the 24th of May, from 2:30 to 4.

5 MR. MARTIN: Thank you, your Honor.

6 THE COURT: I thank you all, and I expect real
7 progress. I am looking forward to a concrete plan that is
8 going to make a difference in the operation of the institution,
9 and that because it needs to make a difference in the safety
10 and quality of life of the people who are in custody there and
11 of all of the people who work there. And that is for the
12 benefit not only of them but for our community of the city of
13 New York.

14 So I thank you for your undertakings, for the
15 seriousness of those undertakings, and I look forward to
16 extraordinary progress on the extraordinary measures that are
17 necessary.

18 MR. MARTIN: Thank you, your Honor.

19 MS. FRIEDBERG: Thank you, your Honor.

20 MS. WERLWAS: Thank you, your Honor.

21 MR. POWELL: Thank you, your Honor.

22 THE COURT: So stay safe, be well, work hard.

23 We are adjourned. Thank you, all.

24 (Adjourned)
25